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STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST:

KEVIN O'BRIEN, R.Ph.,	FINAL DECISION AND ORDER
RESPONDENT	LS0107101PHM

The parties to this action for the purposes of §227.53, Wis. Stats., are:

Kevin O'Brien
559 Echo Valley Rd.
Brooklyn, WI 53521

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Kevin (NMI) O'Brien (dob 9/6/50), is and was at all times relevant to the facts set forth herein a registered pharmacist licensed in the State of Wisconsin pursuant to license #8733, originally granted on 1/9/75. Respondent was previously reprimanded by the Board in file 84 PHM 21 (1987) for substituting Slo-Bid 400mg BID for the prescribed Slo-phyllin 200mg, QID (which the pharmacy did not have in stock), without physician approval, and for then calling the patient and asking her to return to the pharmacy, conducting a history and physical examination of the patient and then dispensing Theolair 250mg TID for the prescribed Slo-phyllin, without physician approval. Respondent is the managing pharmacist of a UW Health Pharmacy, where the below-described activity took place.
2. An employee of the department received two prescriptions from a subordinate pharmacist, without a consultation, on 11/9/00. That same employee received four prescriptions, including two which were not refills, on 12/15/00, at a time when respondent was on duty with a subordinate pharmacist; the employee further observed some 11 other patients to receive prescriptions without consultations on that day.
3. Respondent was observed by a Board investigator on 2/19/01 to transfer a refill prescription for an adult resident of a LTCF to the patient's father, T.D., without a consultation. The Board's investigator reminded respondent of the importance of consultations, and requested that he communicate this reminder to his staff.

4. A subordinate pharmacist on respondent's staff was observed by the same Board investigator to transfer two refill prescriptions to two patients without a consultation on 2/21/01, and when questioned, stated to the investigator that the managing pharmacist had said nothing to him about consultations in the recent past, and that "we don't consult on refills." Respondent denies that this is pharmacy policy.

CONCLUSIONS OF LAW

A. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in paragraphs 2 and 3, above, violated § Phar 7.01(1)(e), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. If the conduct described in paragraphs 2-4, above, does represent the policy of the pharmacy, then respondent's conduct also violated §450.09(1), Wis. Stats., in that the managing pharmacist is responsible for the professional operations of the pharmacy, including formulating and implementing effective policies which comply with state requirements.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that respondent, Kevin O'Brien, R.Ph., is REPRIMANDED for his unprofessional conduct in this matter.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$750, to be paid within 30 days of this Order.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$300, within 30 days of this order.

IT IS FURTHER ORDERED, that an investigator of the department shall observe the practice of pharmacy at respondent's practice location, without advance notice to respondent, at a time convenient to the department, but no less than six nor more than twelve months from the date of this Order. Respondent shall cooperate by furnishing respondent's work schedule upon request.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this July 10, 2001.

WISCONSIN PHARMACY EXAMINING BOARD, by:

John Bohlman

A Member of the Board